

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MELVIN MARINKOVIC,)
Plaintiff,)
)
v.) Civil Action No. 1:13-269
)
HUGHES NET and GEORGE MAYSE,)
Defendant.)

REPORT AND RECOMMENDATION

ROBERT C. MITCHELL, Magistrate Judge.

I. RECOMMENDATION

It is respectfully recommended that the instant fraud action be dismissed for plaintiff's failure to prosecute.

II. REPORT

a. Background

Plaintiff, acting *pro se*, was granted leave to proceed *in forma pauperis* and a complaint was filed on September 3, 2013. Service was not effectuated within the time provided by the Federal Rules of Civil Procedure. On January 13, 2013, this Court issued a show cause order as to why the present action should not be dismissed for failure to prosecute. Plaintiff had until January 27, 2014 to respond. Plaintiff failed to do so, and the magistrate judge issued a Report and Recommendation recommending that the instant case be dismissed for failure to prosecute. Rep. and Rec. [ECF No. 4]. On February 19, 2014, Plaintiff filed a "Motion for Leave to File Out-of-Time Declaration in Response to the Order to Show Cause" [ECF No. 5]. The district judge granted this motion and entered an Order requiring Plaintiff to provide this Court with

proper service instructions, a U.S. Marshal Form 285 to effectuate service upon each defendant, along with a completed notice and waiver of summons and copies of the complaint for each Defendant by March 28, 2014. Memo. Order [ECF No. 7]. As of this date, Plaintiff has not provided the Court with service instructions, and no other activity has occurred.

b. Discussion

The United States Court of Appeals for the Third Circuit has delineated a six-factor test to guide a district court's determination of whether the involuntary dismissal of a case is appropriate. *See Poulis v. State Farm Fire and Casualty Co.*, 747 F.2d 863 (3d Cir. 1984). The court must take into consideration: 1. the extent of the party's personal responsibility; 2. prejudice to the adversary; 3. the history of the party's dilatoriness; 4. whether the attorney's conduct was willful or in bad faith; 5. alternative sanctions; and 6. whether the claim is meritorious. *Id.* at 868-870. All six factors need not be met to warrant dismissal. *Hicks v. Fenney*, 850 F.2d 152 (3d Cir. 1988).

In the instant action, the Court recommends that this case be dismissed. Plaintiff has taken no steps necessary to prosecute his case other than his filing of a motion to proceed *in forma pauperis*, his complaint, and an untimely response to the show cause order. Further, plaintiff has a history in this case of ignoring court orders and had already been informed that his failure to comply with Court orders may result in the dismissal of his case for failure to prosecute. *See Show Cause Order of 1/13/2014* [ECF No. 3]; Rep. and Rec. [ECF No. 4]. Because plaintiff is proceeding *pro se*, he bears all responsibility to adequately prosecute his claims. The Court also finds that alternative sanctions such as monetary sanctions are unsuitable for an indigent plaintiff proceeding *in forma pauperis* as is the case here. While the action may

state meritorious claims, it is certainly impossible to determine at such a premature stage and the Court makes no determination of the validity of plaintiff's claims.

III. CONCLUSION

For the aforementioned reasons, it is respectfully recommended that the instant case be dismissed for plaintiff's failure to prosecute.

In accordance with the Federal Magistrate Judges Act, 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2), Plaintiff is permitted until April 15, 2014 to file written objections to the present report and recommendation. Any party opposing the objections shall have fourteen (14) days from the date of service of objections to respond thereto. Failure to timely file objection may constitute a waiver of some appellate rights. *See Nara v. Frank*, 488 F.3d 187 (3d Cir. 2007).

Dated: April 1, 2014

Respectfully Submitted,

s/Robert C. Mitchell
ROBERT C. MITCHELL
United States Magistrate Judge

cc: The Honorable J. Frederick Motz

MELVIN MARINKOVIC
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